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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

DARIUS DARNELL EDWARDS,

Defendant and Appellant.

F057038

(Super. Ct. No. BF123489A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Colette M. Humphrey, Judge.

Oliver J. Northup, Jr., under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Hill, Acting P.J., Kane, J., Poochigian, J.

PROCEEDINGS

On July 31, 2008, appellant, Darius Darnell Edwards, was charged in an amended felony complaint with one count of committing robbery of an inhabited dwelling in concert with two or more other persons (Pen. Code, § 213, subd. (a)(1)(A), count one),¹ three counts of robbery of an inhabited dwelling (§ 212.5, subd. (a), counts two, three & four), and assault with a deadly weapon (§ 245, subd. (a)(1), count five). The robbery allegations each alleged that Edwards personally used a firearm in the commission of the offense (§ 12022.53, subd. (b)).

On August 26, 2008, Edwards entered into a plea agreement in which he would plead no contest to count two and admit the gun use enhancement. Edwards would receive a four-year sentence on count two and a ten-year sentence for the enhancement. Edwards executed an advisement of rights, waiver, and plea form for felonies (plea form) acknowledging the terms of the plea agreement and his constitutional rights pursuant to *Boykin/Tahl*.² Edwards acknowledged the consequences of his plea and waived his constitutional rights in the plea form. Edwards's counsel executed a statement that he had reviewed the plea form with his client, explained each of his client's rights to him, discussed his client's case with him, answered his client's questions, reviewed the consequences of the plea agreement, and acknowledged a factual basis for the plea.

At the change of plea hearing on August 26, 2008, the trial court confirmed the terms of the plea agreement with Edwards and counsel. Edwards acknowledged executing the plea form and reviewing his rights with his attorney. The parties stipulated to a factual basis for the plea based on the police reports and video surveillance. Edwards pled no contest to count two and admitted he personally used a gun. The remaining allegations were dismissed.

¹ Unless otherwise indicated, all statutory references are to the Penal Code.

² *Boykin v. Alabama* (1969) 395 U.S. 238; *In re Tahl* (1969) 1 Cal.3d 122 (*Boykin/Tahl*).

On December 18, 2008, the court sentenced Edwards to a prison term of 14 years pursuant to the terms of the plea agreement. Edwards filed a timely notice of appeal, but did not obtain a certificate of probable cause.

FACTS

On May 5, 2008, Edwards and two others arrived at the residence of Marcos Topolos, Michael Quill, and Jarret Thomas. Removing a gun from his waistband, Edwards struck Topolos in the back of the head with a chrome revolver. One of Edwards's perpetrators kicked in a bedroom door and brought Thomas into the living room. Quill was taken into a bedroom where one of the perpetrators demanded money. Quill had no money but gave the perpetrator his Xbox. The Xbox was left behind. As Quill was returning to the living room, he was also struck in the head with the handle of an axe and fell to the floor.

Edwards struck Topolos with his fist. Topolos saw Edwards hit Quill with the axe handle. Thomas told investigators a perpetrator and Edwards took his wallet, which contained \$40, and his cellular phone. A laptop computer and other items were stolen by Edwards and his companions. The vehicle Edwards was in matched the description given by the victims and was stopped. Topolos positively identified the robbers. A parole search was conducted of a co-perpetrator's residence, where the stolen property was located.

APPELLATE COURT REVIEW

Edward's appointed appellate counsel has filed an opening brief that summarizes the pertinent facts, raises no issues, and requests this court to review the record independently. (*People v. Wende* (1979) 25 Cal.3d 436.) The opening brief also includes the declaration of appellate counsel indicating that Edwards was advised he could file his own brief with this court. By letter on August 27, 2009, we invited Edwards to submit additional briefing.

Edwards filed a timely letter stating he did not understand the gun use enhancement. At the change of plea hearing, however, Edwards acknowledged going

over his rights with defense counsel. He also acknowledged executing the plea form that clearly and unequivocally set forth the terms of the plea agreement, including a ten-year sentence for the gun use enhancement.

After independent review of the record, we have concluded there are no reasonably arguable legal or factual issues.

DISPOSITION

The judgment is affirmed.